IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5786 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAILESH BABUBHAI PATEL

Versus

POLICE COMMISSIONER, RAJKOT

Appearance:

MR YOGESH S LAKHANI for the Petitioner.

Mr.V.M. Pancholi, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/02/2003

ORAL JUDGEMENT

The petitioner has challenged his detention order dated 12.6.2002, by which he is detained as a 'Bootlegger'. Along with the detention order, he is also served with the grounds of detention. In the grounds of

detention, two cases are mentioned at serial Nos. 1 and 2. Both the cases are filed against the petitioner for offences punishable under Sections 66-B, 65AE and 116-B, read with Section 81 of the Bombay Prohibition Act. It is alleged against the petitioner that he is dealing in English Liquor and he is transporting the same illegally. In the grounds of detention, statements of two witnesses are also incorporated, which show that the petitioner is acting in a high-handed manner and he is threatening the witnesses. It is also mentioned that the aforesaid activity of the petitioner is contrary to public interest and the health of the people at large. The aforesaid detention order is impugned at the instance of the detenu in this petition.

At the time of hearing of this petition, it is argued by Mr.Thakkar, learned Advocate for the petitioner, that a co-detenu is already released by this Court in Special Civil Application No.7604 of 2002 and he submitted that against that order, even no appeal is filed. This fact that a co-detenu is released by this Court is not in dispute. However, since the facts of the aforesaid case are not available with this Court, it is not possible to take the said fact into account as to on what ground the said co-detenu is released by this Court. Mr.Thakkar thereafter argued that the statements of witnesses are recorded in a mechanical manner. It is submitted that statements of two witnesses were recorded on 10.6.2002 and it was sent to the detaining authority on the very day and that the detaining authority called the witnesses immediately on the next day, i.e. on 11.6.2002, and the detention order is passed on 12.6.2002. It is submitted that the aforesaid conduct shows that the detaining authority acted in an absolutely mechanical manner, as, within two days, the so-called formality is completed. Mr.Thakkar has relied upon the decision of this Court in Ranubhai Bhikhabhai Bharwad v. State of Gujarat & Ors., XLI(3) : 2000(3) GLR 2696. This Court observed in paragraph 9 as under :-

> " ... ...
>
> The statements of the three witnesses in the instant case which were recorded before the Police Inspector on 17th August 1999, 21st August 1999 and 25th August 1999 with regard to the incidents dated 10th July 1999, 13th June, 1999 and 26th June, 1999 were the material along with the proposal which is said to have been made on 27th August 1999 and it is clear from the record

> that it was on 29th August 1999 that the detaining authority has recorded its verification of all these three statements. There is nothing on record to show that the detaining authority had considered the proposal dated 27th August 1999 at any time prior to 29th August 1999 and on 29th August, 1999, all that has been done is that the concerned witnesses have stated before the detaining authority that the statements as had been made on the respective dates were correct and immediately thereafter on the following day, i.e. on 30th August 1999 the detention order has been passed.
>
> ... ..."

Mr.Pancholi, learned AGP, however, submitted that the detaining authority called the witnesses in his Chamber and immediately, on the next day, he passed the order after verification. However, considering the fact that the Sponsoring authority recorded the statements on 10.6.2002, and, ultimately, the detention order is passed within two days itself would support the contention of the petitioner, which is based on the judgment of this Court in XLI(3) : 2000(3) GLR 2696 (supra). Considering the aforesaid aspect as well as considering the judgment of this Court, in my view, in the instant case, in can be said that the statements of the witnesses are recorded in a mechanical manner and the detaining authority has passed the order in a mechanical manner. Considering the judgment of this Court, in my view, the order of detention is required to be set aside on the aforesaid ground.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the petitioner be released forthwith unless he is required in connection with any other case. Rule is made absolute.

(P.B. Majmudar, J.)

***

(apj)